

STATE OF CALIFORNIA
DEPARTMENT OF CORPORATIONS

TEXT OF PROPOSED CHANGES UNDER THE
CALIFORNIA FINANCE LENDERS LAW AND THE
CALIFORNIA RESIDENTIAL MORTGAGE LENDING ACT
PURSUANT TO NOTICE
DATED: MAY 4, 2007

1. Section 1436 is adopted to read:

Nontraditional Mortgage Products.

1436. (a) *Best Practices.* Every finance company shall implement appropriate and best risk-management practices on a continuous basis. These risk-management practices shall include, but not be limited to, practices set forth in the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators Guidance on Nontraditional Mortgage Product Risks (the Guidance) released on November 14, 2006. The Guidance is available on the Department's web site at www.corp.ca.gov, and is hereby incorporated by reference.

(b) *Written Compliance Report.* In a separate written document, submitted as an addendum to its annual financial report required under Section 22159, every finance company shall state whether it made or arranged nontraditional mortgage products, as defined by the Guidance, during the reporting period covered by the annual report. If any such loans were made or arranged, the finance company shall also explain how it has implemented best risk-management practices and explain whether and how it has put into effect the following internal controls or procedures during the reporting period: adopted policies and procedures to ensure compliance with the Guidance; designated a compliance officer (including contact information of that officer) to ensure compliance with the Guidance; implemented a consumer complaint process to resolve consumer

complaints involving loans covered by the Guidance; and educated employees to help them understand how to apply the best risk-management practices. In addition, the finance company shall indicate the number of consumer complaints it received during the reporting period regarding loans that are subject to the Guidance, including the number of resolved complaints and unresolved complaints. If any nontraditional mortgage loans subject to the Guidance were made or arranged, the finance company shall also submit information regarding those loan products on a form prescribed by the Department. The form (entitled Nontraditional Mortgage Loan Survey and dated 5/1/07) is available on the Department's website at www.corp.ca.gov. and is hereby incorporated by reference.

(c) *Books and Records.* If the finance company receives any reportable consumer complaints described in subsection (b), the finance company shall maintain for each complaint a copy of the complaint and the finance company's written response or explanation of how the company resolved the complaint, shall maintain this documentation as part of its books and records, and shall make the documentation available to the commissioner upon request. In addition, if the finance company reports any internal controls or procedures or nontraditional loans described in subsection (b), the finance company shall maintain documentation of those controls or procedures as part of its books and records, and any loan documentation required by law, and shall make the documentation available to the commissioner upon request.

(d) *Loan Disclosures.* Every finance company shall, within three business days after receipt of a completed application for a nontraditional loan or before the borrower becomes obligated on the note, whichever is earlier, cause to be delivered to the borrower a statement in writing disclosing, in a clear and conspicuous manner that is readily understood by a person unfamiliar with mortgage loan terms and conditions,

material information comparing payment scenarios and loan balance scenarios among various nontraditional loan products offered by the finance company. At a minimum, the information shall meet the content as prescribed in a form of the Department. The form (entitled Comparison of Sample Mortgage Features: Typical Mortgage Transaction and dated 5/1/07) is available on the Department's website at www.corp.ca.gov. and is hereby incorporated by reference. The form of the typical mortgage transaction disclosures set forth in the Comparison of Single Mortgage Features of the Form RE 885 of the Department of Real Estate shall be deemed to satisfy the requirements of this subsection.

(e) *Advertising Prohibitions.* For purposes of Section 22161, the following are considered false, misleading, or deceptive advertising prohibited by that section:

(1) Any representation of an installment in repayment of an adjustable rate, interest only or payment-option loan without an equally prominent disclosure of the following information about the loan:

(A) Principal amount

(B) Term of loan

(C) Initial interest rate

(D) Number of months the initial interest rate will be in effect

(E) Fully-indexed interest rate

(F) Maximum interest rate

(G) If different, an explanation of the difference between the payment rate, initial interest rate and fully-indexed rate

(H) Annual percentage rate

(I) How often the interest rate and payments can change

(J) Maximum periodic change in the interest rate and payments (periodic caps)

(K) Number of months and percentage of original loan amount after which minimum payments will not be accepted and the loan re-amortizes

(L) The monthly payment based on the maximum interest rate, and the loan balance after all negative amortization is included, assuming minimum payments are made

(M) If the loan contains a prepayment penalty, a statement to that effect

(N) If the loan contains a balloon payment, a statement to that effect

(2) Any statement that the licensee can arrange "low doc/no doc", "no income/no asset", "stated income", "stated asset", "no ratio" or similar loan products without a statement that these products may have a higher interest rate, more points or more fees than other products requiring documentation.

NOTE: Authority cited: Section 22150, Financial Code. Reference cited: Sections 22150, 22156, 22157, 22159, 22161, 22163, 22164, 22302, 22701, and 22714, Financial Code.

2. Section 1950.314.8 is adopted to read:

Nontraditional Mortgage Products.

1950.314.8. (a) *Best Practices*. Every licensee shall implement appropriate and best risk-management practices on a continuous basis. These risk-management practices shall include, but not be limited to, practices set forth in the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators Guidance on Nontraditional Mortgage Product Risks (the Guidance) released on November 14, 2006. The Guidance is available on the Department's web site at www.corp.ca.gov, and is hereby incorporated by reference.

(b) Written Compliance Report. In a separate written document, submitted as an addendum to its annual financial report required under Section 50307, every licensee shall state whether it made or arranged nontraditional mortgage products, as defined by the Guidance, during the reporting period covered by the annual report. If any such loans were made or arranged, the licensee shall also explain how it has implemented best risk-management practices and explain whether and how it has put into effect the following internal controls or procedures during the reporting period: adopted policies and procedures to ensure compliance with the Guidance; designated a compliance officer (including contact information of that officer) to ensure compliance with the Guidance; implemented a consumer complaint process to resolve consumer complaints involving loans covered by the Guidance; and educated employees to help them understand how to apply the best risk-management practices. In addition, the licensee shall indicate the number of consumer complaints it received during the reporting period regarding loans that are subject to the Guidance, including the number of resolved complaints and unresolved complaints. If any nontraditional mortgage loans subject to the Guidance were made or arranged, the licensee shall also submit information regarding those loans on a form prescribed by the Department. The form (entitled Nontraditional Mortgage Loan Survey and dated 5/1/07) is available on the Department's website at www.corp.ca.gov. and is hereby incorporated by reference.

(c) Books and Records. If the licensee receives any reportable consumer complaints described in subsection (b), the licensee shall maintain for each complaint a copy of the complaint and the licensee's written response or explanation of how the company resolved the complaint, shall maintain this documentation as part of its books and records, and shall make the documentation available to the commissioner upon request. In addition, if the licensee reports any internal controls or procedures or

nontraditional loans described in subsection (b), the licensee shall maintain documentation of those controls or procedures as part of its books and records, and any loan documentation required by law, and shall make the documentation available to the commissioner upon request.

(d) *Loan Disclosures.* Every licensee shall, within three business days after receipt of a completed application for a nontraditional loan or before the borrower becomes obligated on the note, whichever is earlier, cause to be delivered to the borrower a statement in writing disclosing, in a clear and conspicuous manner that is readily understandable by a person unfamiliar with mortgage loan terms and conditions, material information comparing payment scenarios and loan balance scenarios among various nontraditional loan products offered by the licensee. At a minimum, the information shall meet the content as prescribed in a form of the Department. The form (entitled Comparison of Sample Mortgage Features: Typical Mortgage Transaction and dated 5/1/07) is available on the Department's website at www.corp.ca.gov. and is hereby incorporated by reference. The form of the typical mortgage transaction disclosures set forth in the Comparison of Single Mortgage Features of the Form RE 885 of the Department of Real Estate shall be deemed to satisfy the requirements of this subsection.

(e) *Advertising Prohibitions.* For purposes of Section 50204, the following are considered false, misleading, or deceptive advertising prohibited by that section:

(1) Any representation of an installment in repayment of an adjustable rate, interest only or payment-option loan without an equally prominent disclosure of the following information about the loan:

(A) Principal amount

(B) Term of loan

(C) Initial interest rate

(D) Number of months the initial interest rate will be in effect

(E) Fully-indexed interest rate

(F) Maximum interest rate

(G) If different, an explanation of the difference between the payment rate, initial interest rate and fully-indexed rate

(H) Annual percentage rate

(I) How often the interest rate and payments can change

(J) Maximum periodic change in the interest rate and payments (periodic caps)

(K) Number of months and percentage of original loan amount after which minimum payments will not be accepted and the loan re-amortizes

(L) The monthly payment based on the maximum interest rate, and the loan balance after all negative amortization is included, assuming minimum payments are made

(M) If the loan contains a prepayment penalty, a statement to that effect

(N) If the loan contains a balloon payment, a statement to that effect

(2) Any statement that the licensee can arrange "low doc/no doc", "no income/no asset", "stated income", "stated asset", "no ratio" or similar loan products without a statement that these products may have a higher interest rate, more points or more fees than other products requiring documentation.

NOTE: Authority cited: Section 50304, Financial Code. Reference cited: Sections 50124, 50204, 50302, 50304, 50307, 50308, 50314, and 50322, Financial Code.